

IN THE MATTER OF

CARRIT, LLC

Petitioner

* BEFORE THE
* HOWARD COUNTY
* BOARD OF APPEALS
* BA Case No. 08-004V

*

DECISION AND ORDER

The Howard County Board of Appeals convened on August 28, 2008 to hear the amended petition of Carrit, LLC, Petitioner, for variances to reduce the 150-foot structure and use setback from a residential zoning district to 109 feet for a proposed building, to 56 feet for parking and to 0 (zero) feet for a driveway in an M-2 (Manufacturing: Heavy) Zoning District, filed pursuant to Sections 123.D.2.c and 130.B.2 of the Howard County Zoning Regulations.

Four members of the Board were present at the hearing and each Board member indicated that they had viewed the property as required by the Zoning Regulations. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code.

The case was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the Department of Planning and Zoning Technical Staff Report recommending denial, the General Plan for Howard County, the General Plan of Highways, and the Petition and Plat submitted by the Petitioner were incorporated into the record by reference. This case comes before the Board on a *de novo* appeal filed by the Petitioner from the May 5, 2008 Decision and Order of the Howard County Hearing Examiner.

The Petitioner was represented by Sang W. Oh, Esquire. The following persons testified on behalf of the Petitioners: Timothy Madden and Jean Rittermann. The following individuals testified in opposition to the Petition: Gloria Clark and Ed Lastnar.

As a preliminary matter, on August 28, 2008, the Petitioner submitted an amended petition and plan to the Board, shown as Petitioner's Exhibit #1 ("Carrit Property Building and Use Setback Variance Exhibit"), and Petitioner's Exhibit #2 ("Section 122.B.16 of the M-1 (Manufacturing: Light) District Zoning Regulations. In accordance with Board Rules of Procedure 2.202 (b&c), the Board considered whether or not the amendments made to the petition and plan were substantive in nature. The Board found that the amendments were not substantive in nature and continued with the hearing.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Board makes the following Findings of Fact:

1. The Petitioner is the owner of the subject property known as 6835 Athol Avenue, which is located in the First Election District. The subject property is situated on the south side of Athol Avenue, northeast of Santa Barbara Court (the "Property"). The Property is referenced as Tax Map 38, Grid 19, and Parcel 516.

2. The 2.39-acre, generally rectangular, Property is about 500 feet deep and has a variable width ranging between 160-180 feet, with the widest area in the northwestern portion of the site. The Property is subject to a 150-foot setback from the northeasterly adjoining residentially zoned properties per Section 123.D.2.c. of the Regulations. Due to the Property's narrow width, almost all but a very small portion of the Property lies within this setback.

3. The Property formerly adjoined an unused public right-of-way for Athol Avenue on its northerly lot line. This right-of-way was abandoned in the early 1990's, and a former property owner acquired it to enlarge the Property. Consequently, the Property is now effectively a pipestem lot with a 30-foot wide pipestem extending several hundred feet in a southwesterly manner to Santa Barbara Court. The County has a 30-foot ingress/egress easement over this pipestem to provide emergency access to the residential properties along Athol Avenue during floods.

4. The Property does not currently have paved vehicular access to Santa Barbara Court, although there is a rough stone driveway in the area of the easement. This driveway drops in elevation from Santa Barbara Court to the gate at the southwest end of Athol Avenue.

5. The original area of the Property is open lawn to the southeast of the gate and then becomes a wooded area that slopes down significantly to the southeast lot line. The Conditional Use Plan depicts wetlands in the southeastern corner of the Property.

6. Vicinal properties include the following:

(a) To the northwest of the Property is M-2 zoned Parcel E-1 of the Route 100 Business Park, which is improved with a large warehouse development. The portion of Parcel E-1 that is closest to the main portion of the Property is an apparently unused, fenced loading area and beyond that, a wooded area.

(b) Adjoining the northeast side of the Property are residential lots in the R-12 District which have access from Athol Avenue and are improved with existing single-family detached dwellings.

(c) To the southeast of the Property is a railroad right-of-way.

(d) Adjoining the southwest side of the Property is M-2 zoned Parcel G, which is improved with an industrial building, which is relatively small in comparison to many other buildings in the Route 100 Business Park.

7. Santa Barbara Court has two travel lanes and about 36 feet of paving within an existing 60-foot right-of-way. The posted speed limit is 25 miles per hour. Santa Barbara Court is depicted as a Local Road on the Plan's Transportation Map. The estimated sight distance from the proposed driveway entrance is more than 400 feet to the south and more than 500 feet to the northwest.

8. The Property is served by public water and sewer.

9. The 2000 General Plan Policies Map designates the Property as "Residential Area and Redevelopment Corridor."

10. The Petitioner is requesting a variance from the 150-foot residential zoning district setback to construct a 15,000 square foot building with a 109-foot building setback. The building would be situated in that portion of the Property closest to Parcel 857/G. The variance plan depicts a loading area at the building's northerly side just off the driveway easement and a large parking island between this area and the adjoining residences.

11. The Petitioner is also seeking a 56-foot use setback instead of the required 150 feet for 38 parking spaces and a driveway running parallel to the building. The driveway would continue around the building and end in another parking area.

12. Lastly, the Petitioner is requesting a zero-foot setback, instead of the required 150 feet, from Athol Avenue where it ends at the gate in order to replace the gravel driveway with an asphalt drive that would terminate at the Athol Avenue gate to provide access to the

loading dock and the driveway/parking area between the building and the adjoining residential properties.

13. Timothy Madden, an engineer with Morris and Ritchie Associates, Inc., testified and stated that the amendments to the Petitioner's variance plan were made in response to comments in DPZ's Technical Staff Report. Specifically, the proposed 15,000 square foot building would be moved further away from the adjoining residential property line to the northeast and that the Petitioner would limit the proposed building to an M-1 zoning district type of use. Mr. Madden stated that, in comparison to many of the M-2 zoned properties in the adjoining Route 100 Business Park, the subject Property is relatively small and narrow. Mr. Madden stated that the proposed 15,000 square foot building would be the smallest commercial building in the industrial park. Mr. Madden testified that the area of the property that remains after applying the required 150-foot building and use setback is insufficient for any kind of development. Mr. Madden stated that the Petitioner would provide a combination of privacy fencing, additional landscaping and a screening wall near the loading dock area in an effort to better screen the use from adjoining residences. Mr. Madden stated that the Petitioner had not previously created the parcel through subdivision, but purchased it subject to the existing 150-foot setback.

14. Jean Rittermann, a member of Carrit, LLC, testified and stated that Carrit, LLC, owns the M-2 zoned Parcel 857/G which adjoins the Property's southwest lot line and is improved with an approximately 28,600 square foot building. Ms. Rittermann stated that there is no purchaser or specific user for the proposed building at this time, however, any potential user will be limited to a "Contractor's Office" type of use permitted as a matter of right under Section 122 (the M-1 zone) of the Zoning Regulations.

15. Ed Lastnar, a nearby resident, testified that he is opposed to a variance being granted in this matter and would like to see the existing setbacks enforced. Mr. Lastnar stated that the proposed building will generate unwanted noise and exacerbate an existing flooding problem in the neighborhood.

16. Gloria Clark, whose dwelling lies closest and downhill from the proposed building testified in opposition to the petition. Ms. Clark stated that she will be troubled by noise that will be generated during the construction process of a building. Other issues that concerned Ms. Clark were truck noise, cars parking at the site, light pollution and the fact that an improved road could open up the area to more pedestrian traffic.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

- (3) That such practical difficulties or hardships have not been created by the owner, provided, however, that, where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
- (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, the Board concludes as follows:

1. The Board concludes that the Property is relatively small and narrow compared to area M-2 zoned properties. In addition, the southeast area of the Property slopes down significantly to the railroad right-of-way and its back section is encumbered by wetlands. Consequently, the shape of the Property in combination with the topography and environmental features are unique physical conditions that cause the Petitioner practical difficulties in complying strictly with the setback requirement for properties within the M-2 (Manufacturing: Heavy) Zoning District, in accordance with Section 130.B.2.a(1).

2. The granting of the variance will enable the Petitioner to construct a 15,000 square foot building, an elongated parking lot with 38 total parking spaces, loading spaces on the north side of the building, and a 24-foot wide paved driveway running between Santa Barbara Court to the southwest and the existing terminus of Athol Avenue to the northeast. The Property is an undeveloped parcel that adjoins the Route 100 Business Park industrial subdivision, but which was not part of that subdivision. The Property adjoins a R-12 District residential neighborhood along its northeast side and as such is subject to a 150 foot structure and use setback from the R-12 District. This setback requirement is significant for the Property because its northeast-southwest width is only approximately 180 feet at the widest point. The

Petitioner proposes to develop the Property with a less intensive M-1 permitted use. The Petitioner proposes to provide a combination of privacy fencing, landscaping and a screening wall and additional landscaping in the island near the loading area to better screen the use from adjoining residences. Accordingly, the Board finds that the variance, if granted, will not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in compliance with Section 130.B.2.a.(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the size and shape of the lot and was not created by the Petitioner, in accordance with Section 130.B.2.a.(3).

4. The 150-foot residential setback as applied to the Property renders only a very small area developable without a variance. The proposed 15,000 square foot building and associated parking will make possible the reasonable use of the land. The proposed building use will be limited to a less intensive M-1 type of use. As such, the Board concludes that the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 2ND day of December, 2008, by the Howard County Board of Appeals, **ORDERED**:

That the amended petition of Carrit, LLC, Petitioner, for variances to reduce the 150-foot structure and use setback from a residential zoning district to 109 feet for a proposed building, to 56 feet for parking and to 0 (zero) feet for a driveway in an M-2 (Manufacturing: Heavy) Zoning District is hereby **GRANTED**, subject to the following conditions:

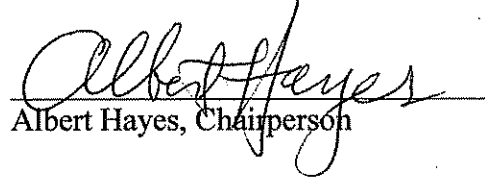
1. The variances shall apply only to the amended petition/plan and uses submitted to the Board on August 28, 2008, as Petitioner's Exhibit Nos. 1 & 2, and not to any other activities, uses, or structures on the Property.
2. The proposed 15,000 square foot building shall only be used as a Contractor's Office and outdoor or indoor storage facility, as set forth in Section 122.B.16, M-1 (Manufacturing: Light) Zoning District of the 2008 Zoning Regulations.
3. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

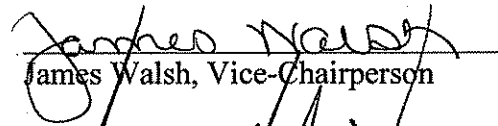


Ann Nicholson, Secretary

HOWARD COUNTY BOARD OF APPEALS



Albert Hayes, Chairperson



James Walsh, Vice-Chairperson

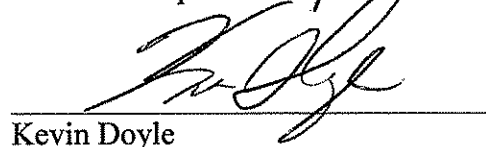
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